Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Federal-State Joint Board	)	CC Docket No. 96-45
On Universal Service	)	

High-Cost Universal Service Support and the ETC Designation Process

Reply Comments of Beacon Telecommunications Advisors, LLC

Beacon Telecommunications Advisors, LLC (Beacon) submits these comments in response to the Federal-State Joint Board seeking comment on certain of the Commission's rules relating to high-cost universal service support and the ETC designation process.[1] Beacon is a regulatory, financial, and management consulting firm providing services to small, rural, and tribal incumbent local exchange carriers (ILECs) throughout the United States.

Summary of Reply Comments

Beacon's primary point in its May 5, 2003 comments was that for rural, rate-of-return Incumbent Local Exchange Carriers (ILECs) or Eligible Telecommunications Carriers (ETCs), the monies received from the federal Universal Service Funds (USFs)[2] are to satisfy interstate revenue requirements that were at one time included in interstate rates prior to Divestiture and in interstate access rates post Divestiture. The FCC and the Joint Board have systematically shifted these interstate revenue requirements to their present position as part of the federal USFs. These interstate revenue requirements are defined

[1] FCC Public Notice released 2/7/03
[2] Defined as High Cost Loop Support (HCLS), Interstate Common Line Support (ICLS), Long Term Support (LTS), and Local Switching Support (LSS)

according to FCC rules[3]. Revenue requirements have traditionally been tied to issues of confiscation and takings under the 5th amendment of the US Constitution. It is Beacon's belief that the legal standing of these revenue requirements have not changed simply because they have been moved to federal USFs.

For Competitive Local Exchange Carriers (CLECs) that are Competitive Eligible Telecommunications Carriers (CETCs), the monies received from the federal USFs are not interstate revenue requirements. This clearly has ramifications for decisions regarding portability, including what amounts are portable as well as if the participation should be limited, e.g. only primary lines.

Beacon feels that a clear understanding of this important issue regarding interstate revenue requirements recovered via federal USFs would make some of the questions posed by the Joint Board moot. It might also raise another set of issues.

After reviewing the comments of other parties, and recognizing the lack of even basic agreement regarding interstate revenue requirements, Beacon respectfully requests the Joint Board to thoroughly investigate the unique issues associated with the recovery of interstate revenue requirements by rural rate-of-return ILECs via federal USFs. It clearly is a critical issue and should be addressed before moving forward on the other issues.

Compilation of Comments regarding Interstate Revenue Requirements

It may not be accurate to try to ascertain a particular party's understanding of the role of interstate revenue requirements from their May 5, 2003 comments, since the Joint Board did not raise the issue. Statements regarding this issue were usually made in support of a particular position taken on an issue that was raised by the Joint Board.

[3] Code of Federal Rules and Regulations Title 47 Parts 32, 64, 36, 65, 69 and 54.

Even so, there appears to be misunderstandings (or at best confusion) as to the available options and implications if ILEC interstate revenue requirements are recovered via federal USFs. The compilation below is only for illustrative purposes to show that there appears to be significant differences of opinion as to what the federal USF amounts paid to ILECs recover and the implications of having one LEC group recovering their interstate revenue requirements and another LEC receiving the same amount.

It is anticipated if the Joint Board had asked specific questions regarding the recovery of interstate revenue requirements from federal USFs, that parties may have refined their positions or even taken different positions after more investigation. The comments below are not meant to be all-inclusive. Furthermore there is no effort to comment on the merits of this compilation or even if it is factually correct. Rather this compilation is to show a lack of a common agreement on a basic issue of recent history. Needless to say, this compilation is not intended to prejudge any party's position regarding specific questions the Joint Board may choose to ask at a later date.

Increase in size of federal USF

A number of parties with diverse points of view recognized that one of the reasons that the federal USFs are increasing in size is the shift of ILEC cost recovery to the federal USFs. Montana Universal Service Task Force (MUST) at page 13 stated that "the substantial shift of cost recovery to rural end user local rates resulting from aggressive increases in the subscriber line charge (and the simultaneous shifting of additional cost recovery to the universal service fund)… ". GCI at page iii stated that "[d]emand on the federal universal service fund (USF) have grown significantly over the past several years, as rate-of-return ILECs' expectations for full recovery of their embedded costs plus a rate of return through USF have gone virtually unchecked …". At page 34 GCI continued that "while HCLS and LSS provide support for costs that would otherwise be recovered in intrastate rates, ICLS and LTS together support a portion of the interstate-allocated common line costs of rate-of-return ILECs".

OPASTCO at page 14 observed "LTS and ICLS was a revenue neutral shift of cost recovery for rural ILECs that previously occurred through access charges. Neither mechanism provides rural ILECs with any additional revenues that they received prior to implementation." The Rural Telephone Finance Cooperative at page 2 stated "[r]emoval of implicit supports form access charges has proportionately increased the share of rural telco's revenues that comes from the USF."

Cost Recovery for Rate-of-Return Carriers

Other parties were more forceful. GVNW at page 3 stated, "[t]he overarching principle that the Joint Board and Commission must adhere to is that rate-of-return carriers are entitled, as a matter of law, to a FULL recovery of their costs in providing interstate services. One of the key components of this cost recovery is the revenue received from federal universal service fund (USF) support." United States Cellular Corporation at page 7 wrote that "[l]ocal exchange telephone companies are regulated by state public utilities commission in accordance with regulations which prescribe a fixed "rate of return" on their capital. They are also regulated by the FCC, whose Part 69 regulations permit them to recover their costs of providing access to their networks for interstate or long distance service. ILEC access charges for rural, "rate of return" carriers have been reduced in recent years but still make a substantial contribution to their revenues. Moreover, reductions in access charges have been "balanced" by other universal service support flows to such carriers, such as Interstate Common Line Support ("ICLS"), and the development and implementation of state USF programs. (Footnotes not included). At page 18 in discussing the various federal USF programs AT&T stated "[t]he common thread to each of these programs is that they provide offsets to revenue requirements of rate-of-return ILECs."

Confiscation

One party, SBC, raised a potential confiscation issue when on page 16 it stated that "[o]f course, eliminating universal service support for non-primary connections/services is only half the equation. Eliminating such support without taking steps necessary to permit carriers in high cost areas to reform their rates to recover fully the costs of providing non-essential, non-primary connections/services would be confiscatory." (Footnote excluded).

On the other hand, at least one party, Nextel, seemed to dismiss at least indirectly the issue of recovery of interstate revenue requirements from federal universal service funds, e.g., Nextel at page ii stated, "Legally, there is no justification for the continued "protection" of rural ILECs through the USF. As both the Commission and the courts have recognized, the rural ILECs do not have any legal right to continue to collect embedded network costs through the universal assessments that are imposed on other carriers." (Emphasis not added).

Rate-of-Return ILECs and CLECs

Other parties seem to recognize the difference and the potential problems caused by the different treatment of rate-of-return ILECs and CLECs. For example, Western Wireless at page 3 stated, "[i]n a multi-carrier environment, rate of return regulation, which guarantees profits to the incumbent, but not to competitive entrants, is a major impediment to competition and creates pernicious incentives for inefficient production". GCI at page 3: "[r]ather than harnessing competition to reduce the need for subsidies, or better targeting subsidies, the existing support mechanisms for areas served by rate-of-return incumbent local exchange companies ("ILECs"), particularly in rural telephone company service areas, use subsidies to guarantee a portion of the ILEC revenue stream and to reduce ILEC business risks in the face of emerging competition."

Request

The purpose of this compilation is to point out the wide range of views regarding interstate revenue requirements of rural rate-of-return ILECs in general and the recovery of such revenue requirements via federal USFs. No effort has been made to offer differing viewpoints from those that were expressed by the commenters, even in cases where Beacon held different views and/or felt the expressed viewpoint was incorrect. Rather, given the importance of this basic issue, Beacon respectfully requests the Joint Board to thoroughly investigate the unique issues associated with the recovery of interstate revenue requirements by rural non-price cap ILECs via federal USFs. The purpose of such an investigation is to insure a common understanding of the exact status of interstate revenue requirements recovered via federal USFs, both now and into the future. It clearly is a critical issue and should be addressed before moving forward on the other issues.

Respectfully submitted,

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[Filed Electronically]

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